



**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

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Order Instituting Rulemaking)
Proceeding to Consider Rules to)
Implement the Broadband Equity,)
Access, and Deployment Program.)

Rulemaking No. 23-02-016

COMMENTS OF RACE TELECOMMUNICATIONS, LLC (U-7060-C)

ON OIR ON RULES TO IMPLEMENT THE BEAD PROGRAM

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April 17, 2023

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Pursuant to Rule 6.2 of the Commission’s Rules of Practice and Procedure and the schedule set in the Order Instituting Rulemaking Proceeding dated February 23, 2023 (“OIR”), Race Telecommunications, LCC (“Race”) hereby files its Comments on the OIR to Consider Rules to Implement the Broadband Equity, Access, and Deployment Program (“BEAD”).¹ Race is a certificated Competitive Local Exchange Carrier (“CLC”) in California whose mission is to close the Digital Divide in rural and remote areas of the State of California. Race has received over a dozen California Advanced Services Fund (“CASF”) grants and is proud to serve thousands of California consumers in rural and remote areas as their broadband, video and digital voice provider with fiber networks that provide gigabit speed broadband service at affordable prices.

The Commission’s OIR requests public comment to assist it with developing rules and procedures that would apply to subgrantees who are awarded BEAD funding. Race appreciates the ability to provide input on two of the Commission’s questions on BEAD implementation.

6. Challenge Process. States must develop and implement a transparent, evidence-based, fair, and expeditious challenge process under which a unit of local government, nonprofit organization, or broadband service provider can challenge a determination made by states as to whether a particular location or community anchor institution within the jurisdiction of the Eligible Entity is eligible for grant funds. Among other things, the process must allow for challenges regarding whether a particular location is unserved or underserved as defined in the Infrastructure Act

¹ Order Instituting Rulemaking Proceeding to Consider Rules to Implement the Broadband Equity, Access, and Deployment Program, Rulemaking 23-02-016 (Issued March 1, 2023) (“BEAD OIR”).

and Section I.C of the Notice of Funding Opportunity. What information²⁰ should be provided by a challenger as a basis for asserting service already exists at a location, or at locations, that disqualify them from being called “unserved?”

On question six, relating to the challenge process, Race has reviewed the CPUC’s most recent revised broadband map and it has found that some locations for which Race received prior CASF grants and for which Race completed construction of fiber facilities are listed as “unserved/underserved.” It would be a waste of scarce resources for grants to be made to those served locations. Race suggests that submittal of evidence of existing service or serviceability include the following: (1) customer bills showing service to a location, (2) shp or cad file of physical network infrastructure, or (3) up-to-date deployment data as requested by the CPUC broadband reporting submittal.

8. Statewide Middle Mile: How should the Commission prioritize subgrantee project proposals that plan on utilizing the statewide open-access middle mile network? Should the Commission require applicants proposing to build their own middle mile infrastructure with BEAD funds to make their network open access? In the event the middle mile portion of an application significantly overlaps the statewide middle mile network, should the applicant be required to consult with the California Department of Technology?²

On the first part of question 8, Race does not believe any preference should be given to applications that utilize the Statewide Middle Mile Broadband Initiative Network (MMBI) over applications that do not use the MMBI. What should be most relevant is whether the application is serving unserved and underserved households. While Race supports the creation of the MMBI in order to provide new options for affordable middle mile services throughout the state, it does not favor giving any preferences to a last mile application that uses MMBI segments versus other middle mile options provided by third parties. The State should be wary of exercising its regulatory authority to divert business to another affiliated state agency that is providing a service competitive to private businesses. A robust middle mile market should include many players using a variety of technologies and offering competitive pricing for a broad variety of services. Should the Commission attempt to divert last mile providers to use the MMBI through

² BEAD OIR at 7.

application preferences, this may discourage current and new middle mile providers from investing in California if the competitive market is skewed.

On the second part of question 8, Race does not support the proposal that applicants should be required to make any middle mile segments that are funded by BEAD subject to open access obligations. For a small CLC like Race, this obligation means it has to stand up and run an entire wholesale organization just because of a few middle mile segments that are a part of a larger last-mile project build. This is very burdensome for a small business.

On the third part of question 8, Race does not support a requirement to consult with the California Department of Technology (“CDT”) as to proposed middle mile segments in an application if there is “significant overlap” with the statewide middle mile network. First, Race recommends that the Commission define “significant overlap” to mean at least 25 miles or more of the statewide middle mile network. Second, it is Race’s direct experience that this CDT consultation requirement may result in excessive delays while CDT considers the project. Race states this based on its experience. On December 16, 2021, the Commission issued Resolution T-17751 (Resolution) which granted Race California Advanced Services Funding for three project areas including the town of Arbuckle. The Arbuckle project -- to serve 480 unserved households -- required a little over ten miles of new middle mile infrastructure in order for Race to extend its existing facilities from Williams, California to Arbuckle, California. Due to the Arbuckle middle mile segment, the Commission in its Resolution required Race to consult with CDT for a three-month period to obtain its consent to build this modest middle mile segment. Absent such CDT approval, the Commission may remove the middle mile funding from the CASF grant, which will render the Arbuckle last mile project uneconomic.

Race engaged in two consultations with CDT and one early one with the Third Party Administrator. Race redesigned the ten miles of middle mile facilities to move it from a part aerial and part underground design to an all underground design to confirm to CDT recommended specifications. Race provided new joint build plans to CDT for a joint Race-CDT middle mile build on November 14, 2022. At the date of this filing, Race has still not obtained a final written decision from CDT. It has been sixteen months since the decision date and 13

months past the 3-month consultation period. Meanwhile, the Arbuckle broadband project has made zero progress and the 480 locations there still have no broadband service.

As a result of this experience, Race strongly recommends that a CDT consultation on middle mile portions of BEAD applications not be required. Race recommends that the Commission Communications Division staff or CDT staff should be tasked to monitor BEAD applications with middle mile portions that significantly overlap (over 25 miles) to the State MMBI route and notify CDT if there are such overlaps as to granted applications. CDT can then reach out to the grantee to discuss joint builds, leases of dark fiber, or other potential arrangements. However, it is unwise for broadband infrastructure projects for unserved/underserved communities to be delayed by required consultation with CDT, if CDT cannot meet the CPUC's three-month deadline.

Race respectfully requests that the Commission consider its recommendations in forming its BEAD OIR rules and appreciates having the opportunity to have input on the rules.

Respectfully submitted,

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